

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LEETON JAHWANZA THOMAS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for Writ of Certiorari to the
Pennsylvania Supreme Court

PETITION FOR A WRIT OF CERTIORARI

-- CAPITAL CASE --

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Dated: December 18, 2019

QUESTION PRESENTED IN THIS CAPITAL CASE

Were Petitioner's rights under the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution violated by a Pennsylvania statutory scheme which does not require a jury to find, prior to imposing a sentence of death, that aggravating factors outweigh mitigating factors beyond a reasonable doubt?

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Leeton Jahwanza Thomas, prays that this Court issue a Writ of Certiorari to review the decision of the Supreme Court of Pennsylvania, decided August 20, 2019, which affirmed Petitioner's conviction and death sentence.

OPINIONS BELOW

The opinion of the Supreme Court of Pennsylvania, rendered August 20, 2019, is reported at *Commonwealth v. Thomas*, 215 A.3d 36 (Pa. 2019). The opinion is attached as Exhibit A.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). The Supreme Court of Pennsylvania decided Petitioner's case on August 20, 2019. On July 5, 2013, counsel filed an *Application for Extension of Time to File a Petition for Writ of Certiorari to the Supreme Court of Pennsylvania*. This Application was filed within ninety days of the entry of the Supreme Court of Pennsylvania's decision and was timely. The Application was granted, and a new date for filing was set for December 18, 2019. This Petition is timely filed.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" U.S. Const. amend. VI.

The Eighth Amendment to the United States Constitution provides, in relevant part: “Excessive bail shall not be required . . . nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII.

The Fourteenth Amendment to the United States Constitution provides, in relevant part: “No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

STATEMENT OF THE CASE

On June 13, 2017, a jury found Petitioner guilty of two counts of criminal homicide; one count of attempted homicide; and one count of burglary.

Commonwealth v. Thomas, 215 A.3d 36, 39 (Pa. 2019). The following day, at the outset of the sentencing hearing, the trial judge instructed the jury that each aggravating circumstance must be proved beyond a reasonable doubt, while mitigating circumstances need be proved by only a preponderance of the evidence. *Id.* at 52 n.16. The court further instructed the jury that it could return a death sentence only if it unanimously found at least one aggravating circumstance and no mitigating circumstances, or that the aggravating circumstances outweighed the mitigating circumstances. *Id.*

At no point during the sentencing hearing, however, did the trial judge instruct the jury that, in order to impose a penalty of death, the jury must determine beyond a reasonable doubt that aggravating circumstances outweigh

mitigating circumstances. Instead, the trial judge instructed the jury to apply a preponderance of the evidence standard when making this determination.

The Commonwealth alleged five aggravators in Petitioner's case, and the defense alleged two mitigators. *See Thomas*, 215 A.3d at 54. The jury found that the Commonwealth had proved all five aggravating circumstances and that the defense had proved both mitigating circumstances. *Id.* Ultimately, the jury found that the aggravating factors outweighed the mitigating factors and sentenced Petitioner to death. *Id.*

Petitioner raised four issues on direct appeal to the Supreme Court of Pennsylvania, one of which was that Pennsylvania's death penalty statute unconstitutionally "permits imposition of the death penalty without a finding beyond a reasonable doubt that the aggravating circumstances outweigh any mitigating circumstances," in contravention of Supreme Court case law. Appellant's Br. at 44.

The Supreme Court of Pennsylvania held that precedent from the United States Supreme Court did not require Petitioner's jury to find that the aggravating circumstances outweighed the mitigating circumstances beyond a reasonable doubt. *Thomas*, 215 A.3d at 52-54. The court affirmed Petitioner's convictions. *Id.*

In his brief to the Supreme Court of Pennsylvania, Petitioner based this claim on the Fifth and Sixth Amendments. Petitioner's present claim sounds in the Sixth Amendment, which guarantees the right to a jury trial, and in the Eighth Amendment, because the Eighth Amendment "cannot tolerate the infliction of a

sentence of death . . . [that is] wantonly and . . . freakishly imposed.” *Lewis v. Jeffers*, 497 U.S. 764, 774 (1990) (internal quotation marks omitted). The Sixth Amendment right to a jury trial and the Eighth Amendment prohibition on cruel and unusual punishments have each been incorporated against the states through the Due Process Clause of the Fourteenth Amendment. *See McDonald v. City of Chicago*, 561 U.S. 742, 765 n.13 (2010). Petitioner’s claim also sounds in the Fourteenth Amendment because “the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *McMillan v. Pennsylvania*, 477 U.S. 79, 84 (1986) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)).

REASONS FOR GRANTING THE WRIT

I. PETITIONER’S SIXTH, EIGHTH, AND FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED WHEN THE JURY WAS NOT REQUIRED TO FIND BEYOND A REASONABLE DOUBT THAT AGGRAVATORS OUTWEIGHED MITIGATORS BEFORE IMPOSING A DEATH SENTENCE.

Defendants in criminal proceedings have the right to have a jury determine, beyond a reasonable doubt, every element of the crime. In capital cases, the factors warranting the imposition of a death sentence qualify as “elements” of the crime because they increase the maximum punishment available for that crime. Because Pennsylvania law does not require a jury to determine beyond a reasonable doubt that aggravating circumstance outweigh mitigating circumstances prior to imposing

a sentence of death, Pennsylvania's capital sentencing scheme violates the Sixth, Eighth, and Fourteenth Amendments.

A. Pennsylvania's Capital Sentencing Scheme

For a capital defendant to receive a sentence of death in Pennsylvania, the jury must first find that the defendant is guilty of first-degree murder beyond a reasonable doubt. In addition, the statutory framework provides that a defendant is not eligible for a death sentence unless the jury unanimously finds either: (1) at least one aggravating circumstance beyond a reasonable doubt and no mitigating circumstances, or (2) one or more aggravating circumstances beyond a reasonable doubt, which outweigh any mitigating circumstances. 42 Pa. Stat. and Cons. Stat. Ann. § 9711(c)(iv). In all other cases, the verdict must be a sentence of life imprisonment. *Id.*

Thus, under Pennsylvania's death penalty statute, the maximum sentence for first-degree murder is life imprisonment *unless* either an aggravating circumstance is found and no mitigating circumstances are determined to exist, or one or more aggravating factors are determined to outweigh any mitigating circumstances found. One of those two determinations is required in order to increase the maximum punishment for first-degree murder from a life sentence to a death sentence.

B. The Sixth Amendment Requires That All Elements That Determine a Defendant's Eligibility for Punishment Be Found by a Jury Beyond a Reasonable Doubt

In criminal proceedings, “[t]he Constitution gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged.” *United States v. Gaudin*, 515 U.S. 506, 522-23 (1995). This includes the right to have a jury determine questions of “materiality” and mixed questions of law and fact beyond a reasonable doubt. *Id.*

In *Apprendi v. New Jersey*, this Court held that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” 530 U.S. 466, 490 (2000). As the Court in *Apprendi* explained, “the ‘reasonable doubt’ requirement ‘has [a] vital role in our criminal procedure for cogent reasons.’ . . . We thus require this, among other, procedural protections in order to . . . reduce the risk of imposing such deprivations erroneously.” *Id.* at 484 (quoting *In re Winship*, 397 U.S. 358, 363 (1970)).

In *Ring v. Arizona*, the Court applied that reasoning to capital cases, holding that aggravating factors that make a defendant eligible for a death sentence “operate as ‘the functional equivalent of an element of a greater offense,’” and must likewise be found by a jury beyond a reasonable doubt. 536 U.S. 584, 609 (2002) (quoting *Apprendi*, 530 U.S. at 494 n.19).

**C. The Finding That Aggravating Circumstances Outweigh
Mitigating Circumstances Makes a Defendant Eligible to
Receive the Death Penalty**

This Court has long recognized the heightened “requirement of reliability on the determination that death is the appropriate penalty in a particular case.” *Mills v. Maryland*, 486 U.S. 367, 383-84 (1990). Confidence that death is the appropriate outcome in a given case is crucial because “the penalty of death is qualitatively different from a sentence of imprisonment, however long.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). The Eighth Amendment requires that the death penalty not be imposed in an arbitrary and capricious manner.

It is now well established that capital defendants have a Sixth Amendment right to have a jury find beyond a reasonable doubt the existence of any aggravating factors making defendants *potentially* eligible for a death sentence. *See Ring*, 536 U.S. 584. This Court, however, has not yet settled the question of whether—in states like Pennsylvania, where a life sentence is the maximum punishment unless a jury finds that aggravating factors outweigh mitigating factors—this determination must be made using the “beyond a reasonable doubt” standard.

In the absence of governing Supreme Court precedent, six federal courts of appeals have held “that a determination of whether aggravating factors sufficiently outweigh mitigating factors is not a fact, but rather the product of a weighing process.” *United States v. Ciancia*, No. CR13-902 PSG, 2015 U.S. Dist. LEXIS 194511, at *5-6 (C.D. Cal. May 19, 2015) (internal quotations omitted) (citing opinions from the First, Fourth, Fifth, Sixth, Eighth, and Tenth Circuits). These

courts have concluded that the reasonable doubt standard therefore does not apply. *See, e.g., United States v. Hager*, 721 F.3d 167, 207 (4th Cir. 2013). The Supreme Court of Pennsylvania has also taken this position. *See, e.g., Commonwealth v. Sanchez*, 82 A.3d 943, 985 (Pa. 2013).

The reasoning of these decisions, however, is flawed. In Pennsylvania, for a defendant to be eligible to receive the death penalty, the jury must find at least one aggravating circumstance beyond a reasonable doubt. 42 Pa. Stat. and Cons. Stat. Ann. § 9711(c). However, a death sentence may be imposed only upon a jury's *additional* finding that no mitigating circumstances exist, or that the aggravating circumstances outweigh the mitigating circumstances. *Id.* § 9711(c)(iv). Thus, if the jury finds that any mitigating circumstances exist, the statute requires a finding that the aggravating circumstances outweigh the mitigating circumstances in order to increase the maximum permissible punishment for first-degree murder from life imprisonment to death. Because this additional finding increases the maximum penalty that a defendant may receive, the Sixth Amendment requires this finding to be made by a jury beyond a reasonable doubt under this Court's precedent in *Apprendi* and *Ring*. Moreover, the Eighth Amendment requires such a finding in order to ensure that the death sentence is not arbitrary or capricious. *See Gregg v. Georgia*, 428 U.S. 153, 188 (1976); *Furman v. Georgia*, 408 U.S. 238, 309-10 (Stewart, J., concurring, with Douglas, Brennan, White, & Marshall, JJ., concurring in judgment) (1972).

Recognizing these important considerations, some state courts have interpreted state death penalty statutes to require a jury to make the weighing determination between aggravating and mitigating circumstances using the beyond a reasonable doubt standard, when the statute is silent on the appropriate standard. In *People v. Tenneson*, the Colorado Supreme Court noted that the state’s “sentencing statute must be construed in light of the strong concern for reliability of any sentence of death.” 788 P.2d 786, 792 (Colo. 1990). The court was persuaded, therefore, that the statute must be interpreted to require that in order to support the imposition of the death penalty, each juror must be convinced that the mitigating factors, if any, do not weigh more heavily in the balance than the proven statutory aggravating factors. An instruction to the jury that they must be convinced beyond a reasonable doubt that any mitigating factors do not outweigh the proven statutory aggravating factors before a sentence of death can be imposed adequately and appropriately communicates the degree of reliability that must inhere in the balancing process.¹

Similarly, the Connecticut Supreme Court has concluded that, “in order to avoid potentially significant constitutional questions, there must be a burden of

¹ The structure of the Colorado statute that was at issue is very similar to Pennsylvania’s death penalty statute. Under the Colorado statute, however, a defendant could be sentenced to death if a jury determined that mitigating factors did not outweigh aggravating factors. Pennsylvania flips this inquiry, such that a defendant may be sentenced to death if aggravating factors *do* outweigh mitigating factors.

persuasion of beyond a reasonable doubt on the jury's determination to impose the death penalty." *State v. Rizzo*, 833 A.2d 363, 401 (Conn. 2003). The court noted that

the nature of the jury's determination as a moral judgment does not render the application of the reasonable doubt standard to that determination inconsistent or confusing. On the contrary, it makes sense, and, indeed, is quite common, when making a moral determination, to assign *a degree of certainty* to that judgment. . . . [O]ur conclusion simply assigns the law's most demanding level of certainty to the jury's most demanding and irrevocable moral judgment.

Id. at 408 n.37 (emphasis added).

Like the statutes in Colorado and Connecticut, Pennsylvania's death penalty statute is silent as to the burden of persuasion that the jury should apply when determining whether the aggravating circumstances outweigh mitigating circumstances in a capital case. The trial court's instruction that the jury should apply a preponderance of the evidence standard in Petitioner's case, however, violated Petitioner's right to have a jury determine every element that increased his possible punishment beyond a reasonable doubt. Because the trial court failed to give such an instruction, Petitioner's right to a trial by jury guaranteed by the Sixth and Fourteenth Amendments was violated, as was his Eighth Amendment right to be free from an arbitrary death sentence.

Because the court below erred when it found that capital defendants do not have the right to have a jury determine that aggravating circumstances outweigh mitigating circumstances beyond a reasonable doubt prior to increasing a defendant's possible punishment, this Court should grant the Petition for Writ of Certiorari.

CONCLUSION

For the reasons stated above, Petitioner urges this Court to grant the Writ of Certiorari and review the decision of the Supreme Court of Pennsylvania.

Respectfully,

A handwritten signature in cursive script that reads "Marc Bookman". The signature is written in black ink and is positioned above the printed name.

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